

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 13-17132

John Teixeira; et al.,
Plaintiffs/Appellants,

v.

County of Alameda; et al.,
Defendants/Appellees

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
(District Court Case No. 3:13-CV-00303-WHO)
HONORABLE WILLIAM H. ORRICK

**DEFENDANTS/APPELLEES' MOTION FOR AN EXTENSION
OF TIME TO FILE A PETITION FOR REHEARING EN BANC**

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County of Alameda, et al.

INTRODUCTION

Defendants/Appellees County of Alameda, et al. (“the County”) hereby move this Court for a 30-day extension of time to file their Petition for Rehearing En Banc pursuant to Federal Rules of Appellate Procedure 35(c) and 40(a)(1) and Circuit Rule 31-2.2.

PROCEDURAL HISTORY

Plaintiffs/Appellants John Teixeira, et al. (“Teixeira”) filed their Notice of Appeal on October 21, 2013. (Docket No. 1.) On March 20, 2014, Teixeira’s opening brief was filed. (*Id.* No. 12.) On August 12, 2014, the County’s answering brief was filed. (*Id.* No. 40.) Teixeria’s reply brief was filed on August 26, 2014. (*Id.* No. 50.) Oral argument was held on December 8, 2015, and the case was taken under submission. (*Id.* No. 59.) On May 16, 2016, the panel issued its decision, affirming in part and reversing in part the district court’s decision. (*Id.* No. 66.) Under the Federal Rules of Appellate Procedure, the County’s Petition for Rehearing En Banc is due 14-days later on May 31, 2016.¹ *See* Fed. R. App. P. 35(c) & 40(a)(1). For the reasons discussed below, the County requests a 30-day extension of time to file its Petition.

ARGUMENT

Circuit Rule 31-2.2 sets forth the standard under which a party may request

¹ Because the 14th day falls on May 30, 2016, Memorial Day, the County’s deadline is extended to the next business day, Tuesday May 31, 2016. *See* Fed. R. App. P. 26(a)(1)(C).

an extension of time for filing a brief. Pursuant to Circuit Rule 31-2.2(b), a party may seek an extension by submitting a motion demonstrating diligence and substantial need.

The County requests a 30-day extension to file its Petition for Rehearing En Banc. The County has been diligently litigating this case. Despite this diligence, a substantial need for an extension exists. An extension is necessary because between now and the end of June, counsel for the County has several pressing commitments and deadlines in other litigated matters. (*See* Decl. Feudale Supp. Defs.’ Mot. Ext. Time File Pet. Reh’g En Banc, ¶ 5.) These commitments inhibit counsel’s ability to review the facts and law this case presents and draft a persuasive petition. (*Id.*) Moreover, given the nature of the underlying subject matter, several drafts and rounds of review are needed before the petition will be ready to file. (*Id.*) Thus, additional time is needed to properly prepare and draft the County’s Petition for Rehearing En Banc.

The County consulted with Teixeira’s counsel regarding the proposed extension. Appellants do not oppose the County’s request for an extension of time to file a Petition for Rehearing En Banc. (*Id.* ¶ 7.)

In light of the above circumstances, the County respectfully requests a 30-day extension of time within which to file its Petition for Rehearing En Banc. The County will file its Petition no later than June 30, 2016.

CONCLUSION

For the foregoing reasons, the County respectfully requests that the Court grant its unopposed request for an extension of time to file its Petition for Rehearing En Banc.

Dated: May 19, 2016

Respectfully submitted,

By: /s/ *Scott J. Feudale*

Scott J. Feudale
Deputy County Counsel
Attorney for Defendants/Appellees
County of Alameda, et al.

**DECLARATION OF SCOTT J. FEUDALE
IN SUPPORT OF DEFENDANTS/APPELLEES' MOTION FOR AN
EXTENSION OF TIME TO FILE A PETITION FOR REHEARING EN
BANC**

I, Scott J. Feudale, declare:

1. I am an attorney at law duly licensed to practice before this Court. I am a Deputy County Counsel with the Office of the County Counsel for the

County of Alameda, attorneys of record for Defendants/Appellees County of

Alameda, et al. (“the County”)

2. This Declaration is submitted in support of the County’s Motion for an Extension of Time to File a Petition for Rehearing En Banc.

3. The County’s Petition is currently due on May 31, 2016.

4. The County hereby requests a thirty-day extension of time to file its Petition.

5. An extension is needed due to unavoidable scheduling conflicts.

Between now and the end of June, I will be managing a busy case load. Indeed,

during this time period, I must make a court appearance in *Li v. County of*

Alameda, No. RG1578666 (Alameda Cnty. Super. Ct.); draft a motion to dismiss in

Moore v. County of Alameda, No. 15-2687 (N.D. Cal.); prepare a joint case

management conference statement and attend a case management conference in

Robertson v. County of Alameda, No. 15 -3416 (N.D. Cal.); attend a hearing in

People v. Hernandez, Nos. 151141, 149904, and 148951 (Alameda Cnty. Super. Ct.); defend a deposition and attend a settlement conference in *Martinez v. County of Alameda*, No. HG15767355 (Alameda Cnty. Super. Ct.); draft a case management conference statement and attend a case management conference in *Brooks v. Guadinier*, No. RG15790611 (Alameda Cnty. Super. Ct.); and draft a motion for summary judgment in *Wilkins v. Ollis*, No. 15- 1859 (N.D. Cal.). Moreover, given the nature of the underlying subject matter, several drafts and rounds of review are needed before the Petition will be ready to file. These commitments will impair my ability to draft a persuasive petition before the current deadline, or immediately thereafter.

6. The County has exercised due diligence in litigating this case. The Petition will be filed within the time requested.

7. I spoke with counsel for Appellants, Donald Kilmer, regarding the County's request for additional time to file the Petition. Mr. Kilmer informed me that Appellants do not oppose an extension of time for Appellees to file a Petition for Rehearing and/or Rehearing En Banc, up to and including June 30, 2016.

8. The court reporter is not in default with regards to any designated transcripts.

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I declare under penalty of perjury under the laws of the State of California
that the foregoing is true and correct. Executed on this 19th day of May, 2016, at
Oakland, California.

/s/ *Scott J. Feudale*

SCOTT J. FEUDALE
Deputy County Counsel

CERTIFICATE OF SERVICE

I, Lizette A. Figueroa, declare:

I am a citizen of the United States of America, over the age of eighteen years and not a party to the within proceeding. I am employed by the Office of the County Counsel, County of Alameda. My business address is 1221 Oak Street, Suite 450, Oakland, California 94612, which is located in the city where the below described service occurred.

I hereby certify that I electronically filed the foregoing:

1. *Defendants/Appellees' Motion for An Extension of Time to File A Petition for Rehearing En Banc;*
2. *Declaration of Scott J. Feudale In Support of Defendants/Appellees' Motion for an Extension of Time to File a Petition for Rehearing En Banc;*
3. *Certificate of Service.*

with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on May 20, 2016.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed on May 20, 2016, at Oakland, California.

/s/ *Lizette A. Figueroa*
LIZETTE A. FIGUEROA
Civil Legal Secretary